

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for Reinstatement of :

Case No. 800-2015-014647

LI QUANG NGUYEN,

OAH No. 2016030222

Physician's and Surgeon's Certificate Number
G 63837

Petitioner.

DECISION AFTER NON-ADOPTION

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter on May 31, 2016, in Oakland, California.

Deputy Attorney General Greg W. Chambers represented the Office of the Attorney General, Department of Justice.

Petitioner Li Quang Nguyen, M.D., was represented by Kevin D. Cauley, Attorney at Law.

The record closed, and the matter was submitted on May 31, 2016.

The proposed decision of the Administrative Law Judge was submitted to the Board on June 30, 2016. After due consideration thereof, the Board declined to adopt the proposed decision and thereafter on August 5, 2016 issued an Order of Non-Adoption instructing the parties on how to obtain a copy of the transcript of the hearing, and on their ability to make written and/or oral arguments. On September 27, 2016 the board further notified the parties of the date and time for oral argument. The time for filing written arguments in this matter has expired, and written arguments were timely received from the Attorney General's office only.

The Board has read and considered the record, including the transcript and exhibits of the hearing, has considered written argument, and the oral arguments made by the parties. Now therefore, pursuant to Government Code section 11517, the Board hereby makes the following decision and order:

FACTUAL FINDINGS

Procedural history

1. On August 22, 1988, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. G 63837 to petitioner Li Quang Nguyen, M.D. Petitioner's certificate was revoked, effective November 24, 2008.

2. On June 2, 2015, petitioner filed with the Board a Petition for Reinstatement of Revoked/Surrendered Certificate (Petition). This hearing followed.

Petitioner's personal and medical background, training and practice.

3. Petitioner was born and raised in Saigon, Vietnam. He came to the United States when he was 14 years old, when North Vietnam took over South Vietnam. He did not speak a word of English when he arrived. Petitioner learned quickly, however, and entered college at Cal Poly, Pomona, at age 16 and graduated at age 19 with degrees in biology and chemistry.

4. Petitioner attended medical school at the University of California, Los Angeles (U.C.L.A.), where he was a top student. Following his graduation from medical school he completed an internship in general surgery and a residency in otolaryngology. Petitioner was licensed in 1988, and in 1999, he was board certified in otolaryngology and plastic surgery.

5. Petitioner opened a private practice in general otolaryngology in Westminster. He was well-known in the community, had many patients and privileges at several hospitals, and worked six to seven days each week.

Disciplinary history

6. In 2003 the Board issued a citation to petitioner for failing to maintain adequate and accurate medical records. Petitioner received a public reprimand in 2005, pursuant to a Stipulated Settlement and Disciplinary Order, for striking a branch of a patient's carotid artery.

Circumstances leading to drug abuse and revocation of medical certificate

7. Petitioner was happily married until 2006, when he learned that his wife was having affairs with other men. The separation and divorce was, in petitioner's words, "messy." He explained that he "filled the void" of being alone with parties, and eventually the parties led to his use of illegal drugs.

8. Petitioner found another relationship, but when his girlfriend kicked him out of their home in July 2007, he checked into a hotel. On July 27, 2007, police officers entered his hotel room for a welfare check and arrested him after finding cocaine and drug paraphernalia in his room. Petitioner had stopped practicing medicine about six months before his arrest out of concern that he was not in "good enough condition" to practice medicine.

9. On April 8, 2008, petitioner pled no contest to violating Health and Safety Code sections 11350, subdivision (a) (unlawful possession of a controlled substance), a felony, and 11364 (possession of drug paraphernalia), a misdemeanor. His pleas were entered pursuant to Penal Code section 1000, which authorized the court to defer entry of judgement while petitioner participated in a drug program.

10. Petitioner's medical certificate was revoked, effective November 24, 2008, following an administrative hearing and decision by the Board. Almost one year later, on October 8, 2009, in the Superior Court, County of Orange, the court dismissed the criminal charges against petitioner based upon his successful completion of his diversion drug program.

Rehabilitation evidence

CHANGE IN ATTITUDE

11. Petitioner realizes that during his administrative hearing in September 2008 he was early in his recovery. Petitioner describes this period as the "lowest point in his life." Petitioner was so ashamed of himself that he almost took his life. In the eight years since his license was revoked petitioner has had a significant and genuine change in his attitude: he has transformed himself from someone who denied his addiction into someone who embraces it. He works every day to maintain his sobriety. In petitioner's words, his drug rehabilitation "saved him." Petitioner is firmly committed to leading a productive and law-abiding life and wants nothing more than to return to the practice of medicine, which he finds truly rewarding. Through his drug abuse treatment petitioner has learned that his "main trigger" is isolation, as it brings up memories of his separation from his wife and children. Therefore, petitioner avoids becoming isolated. He currently lives with his parents in a house that he bought for them years ago.

PARTICIPATION IN 12-STEP PROGRAMS, THERAPY AND DRUG TESTING

12. Petitioner's sobriety date is April 8, 2008. When petitioner was placed on diversion he participated in a rehabilitation program through South Coast Counseling Center. This program included individual and group counseling sessions and substance abuse meetings, and adherence to a 12-step program. Petitioner was also randomly drug tested to ensure his sobriety.

13. Petitioner participated in random drug testing from August 2012 to November 2012 with negative results. Petitioner has also undergone random drug testing (urine and hair) since October 2014, and all of his tests have been negative.

14. Petitioner signed a contract on June 22, 2015, with Pacific Assistance Group (PAG). PAG provides professionals with monitoring and support to remain sober, and those engaged in the program agree to abide by PAG's treatment requirements. Petitioner currently attends seven recovery meetings per week. Two of the meetings are with other professionals, through PAG; and the five others are 12-step meetings (alcoholics and/or narcotics anonymous).

Petitioner has worked the 12-steps three times; he is currently working on step four.

EVALUATIONS REGARDING PETITIONER'S SAFETY TO PRACTICE

15. Psychologist Carrie Jaffe, Ph.D. performed a comprehensive substance abuse assessment of petitioner in December 2012.¹ In a report dated January 28, 2013, Jaffe concluded that petitioner did not exhibit a substance abuse problem. She wrote:

There is no evidence from Dr. Nguyen's history to suggest any history of drug addiction or alcoholism, let alone heavy use of either substance throughout his life.

16. Gregory Skipper, M.D., testified at hearing. He is the Director of Professionals Health Services at Promises Treatment Centers in Los Angeles. Dr. Skipper is board-certified in addiction medicine and has extensive training and experience in the field of addiction medicine. He specializes in treating professionals and, for many years, performed work on behalf of licensing boards.

17. Dr. Skipper initially evaluated applicant on March 24 and June 18, 2014; he also performed a follow-up evaluation on February 10, 2015. In a report dated February 10, 2015, Dr. Skipper diagnoses petitioner with cocaine use disorder, moderate, early remission. He notes that petitioner's narcissistic traits had improved, in that petitioner had become more humble. Dr. Skipper opines that petitioner's insight into his addiction had improved since the prior evaluation. He concludes that petitioner is fit to return to work as a physician as long as he continues to abstain from using illicit drugs, participates in random drug testing, attends 12-step meetings at least one to two times each week and participates in a physician monitoring group. While Dr. Skipper agreed that it is always possible that an individual with substance use disorder will relapse, he believes that petitioner is safe to practice if he continues with his rehabilitation program and if random drug testing and an onsite monitor are required. Dr. Skipper believes that with these safeguards in place, petitioner is sufficiently rehabilitated to the extent that it is unnecessary to limit petitioner's ability to prescribe medicine. Dr. Skipper's testimony was persuasive.

INVOLVEMENT WITH THE PRACTICE OF MEDICINE

18. After losing his license petitioner created a medical device company, Automatic Subthermal Injection System (ASIS). Petitioner is the Chief Operating Officer of ASIS Corporation in Westminster. ASIS has a patent for a medical device used for administering injections. Petitioner works at ASIS, Inc., and IDIT, Inc., in Westminster.

19. Petitioner has recently co-authored three published articles: Nguyen, L., Nguyen,

¹ Petitioner obtained this evaluation with the expectation of filing a petition for reinstatement. He was unable to move forward for financial reasons, however, and waited several years before filing his petition.

H., Phung, and Sercarz, Subdermal Bloodless Space and Prolongation of Collagen in Rats, ASJ International Journal of Advances in Medical Sciences and Biotechnology, Vol. 2 (1), May 2014, pp. 1-5; Nguyen, L., Nguyen, H., Phung, and Sercarz, Monitoring Human Muscular Contractions with Accelerometer, ASJ International Journal of Advances in Medical Sciences and Biotechnology, Vol. 2 (1), May 2014, pp. 6-10; Nguyen, L., Nguyen, H., Phung, and Sercarz, Subdermal Injection of Gadolinium with ASIS Device in Normal Humans' Glabella, International Journal of Medicine and Medical Science Research, Vol. 2 (4), May 2014, pp. 48-52.

20. Petitioner has been out of the practice of medicine since about January of 2007. Because patient safety is of utmost importance to him, petitioner is willing to participate in the Physician Assessment and Clinical Education Program at the University of California San Diego (UCSD) School of Medicine.

21. Petitioner acknowledged when questioned by the Panel during oral arguments that he understood that the Physician Assessment and Clinical Education Program at the University of California San Diego Medical School does not assess clinical skills. He further acknowledged that as such, there is no harm to him being proctored in surgeries.

22. Petitioner testified that since about January of 2007, he has not followed or shadowed a doctor in any clinical practice.

23. Petitioner loves the practice of medicine and wants nothing more than to regain his license. If he becomes licensed he would like to work as a solo practitioner, and also continue working in a more productive capacity in his medical device company.

CONTINUING MEDICAL EDUCATION

24. Petitioner has participated in 150 hours of continuing medical education through the American Medical Association, and he reads various professional journals to keep himself current with developments in his specialty. He acknowledged that had he been practicing, he would have been required to complete 200 hours of continuing medical education over the eight year² period, but believes that his publications would also count as some CME units.

CHARACTER EVIDENCE

25. Two doctors testified at hearing, and another doctor submitted a letter supporting petitioner's reinstatement:

a. Dr. Joel Sercarz, M.D., is a Professor of Surgery at U.C.L.A. Medical School. Dr. Sercarz testified at hearing. He supervised the completion of petitioner's medical training

² Petitioner testified that he stopped practicing around January of 2007, making his period of non-practice nine years and ten months.

and describes petitioner as a “very gifted surgeon whose operative skills would rank him in the top 5 [percent] of otolaryngologists trained at U.C.L.A. since [he] became a faculty member there 23 years ago.” He also describes petitioner as a “good person with a warm heart.” Dr. Sercarz has been involved with petitioner’s medical device company and co-authored several articles with him.

Dr. Sercarz is aware of petitioner’s arrest and addiction to cocaine. He describes petitioner as being “very, very serious” about his recovery. Dr. Sercarz believes that it is the “right thing” to afford petitioner a “second chance” to resume his career. For these reasons, Dr. Sercarz strongly recommends petitioner for license reinstatement and would easily entrust petitioner with caring for his family.

b. Thanh G. Phung, M.D., practices radiology in an office adjacent to petitioner’s former medical office. Dr. Phung testified at hearing. He has known petitioner for over 20 years and worked together on many cases. Dr. Phung has also been involved with petitioner’s medical device company and co-authored several articles with him. He believes that

Dr. Nguyen is a very gifted surgeon with operative skills that would rank him among the top surgeons within the community. He is very compassionate and caring with his patients and well respected by ancillary staff and among his colleagues.

Dr. Phung is aware of petitioner’s drug problem, and observes that petitioner has not shown any evidence of drug addiction or alcoholism, and that petitioner’s attendance at AA meetings appears to have helped him. Dr. Phung strongly recommends that petitioner’s license be reinstated.

c. Athena Phan, M.D., met petitioner when they were residents at U.C.L.A. In a letter dated April 14, 2015, she describes petitioner as a “star resident with excellent surgical skills.” Dr. Phan writes that she interacted with petitioner when they shared office space on the weekends to practice cosmetic surgeries. Dr. Phan describes petitioner as being “well suited to deal with the challenges of otolaryngology,” and strongly supports his petition for reinstatement.

26. In 2014 Petitioner received treatment at Harvard Hospital under an assumed name following a bicycle accident. Petitioner had no insurance and was treated free of charge by friends who did not want to keep medical records for him.

CREDIBILITY FINDING

27. Petitioner’s testimony was credible and candid in all respects.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 2307, subdivision

(b)(1), reinstatement petitions may be filed three years after an individual's license is revoked for unprofessional conduct. In the instant case, petitioner's petition is timely in that it was filed almost seven years after his license was revoked.

2. The burden rests on petitioner to prove that he is sufficiently rehabilitated to the extent that it would not be contrary to the public interest to have his license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The standard of proof is clear and convincing evidence. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d. 308, 315-316; cf. *In re Menna* (1995) 11 Cal.4th 975, 986.)

3. The primary purpose of this proceeding is to protect the public, not to punish the licensee. (See e.g., *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) This view is consistent with the Medical Practice Act, which provides that in exercising its disciplinary authority the board's highest priority is protection of the public. (Bus. & Prof. Code, § 2229, subd. (a).) At the same time, the Legislature has directed the Board to exercise its disciplinary authority in a manner that is calculated to aid in the rehabilitation of the licensee. (Bus. & Prof. Code, § 2229, subd. (b).)

4. Business and Professions Code section 2307, subdivision (e), provides that relevant factors to consider concerning a petition for reinstatement include "all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner's activities during the time the certificate was in good standing, and the petitioner's rehabilitative efforts, general reputation for truth, and professional ability."

Determination and discussion of appropriate terms and conditions of probation

5. Based upon a review of the relevant factors, including the passage of years since the illegal conduct, it is concluded that clear and convincing evidence exists for reinstatement of petitioner's medical license subject to probationary conditions that are designed to ensure that he maintains his abstinence from using illicit drugs, and to ensure that his clinical skills are adequate for consumer protection. The factors considered in making this determination include the following: While petitioner's drug addiction is a very serious matter, the evidence established that petitioner has learned from his past mistakes and is now extremely committed to living a sober and law-abiding life. Although following his arrest, petitioner refused to acknowledge his drug addiction, for the past eight years he has embraced it and has demonstrated a steady and sincere effort to maintain his sobriety. In light of petitioner's strong showing of rehabilitation it would not be against the public interest to grant his petition, and place his certificate on probation for a period of five years.

6. Also considered are all of petitioner's activities and professional ability needed to safely return him to the clinical practice of medicine. Though petitioner has a long and impressive history as an otolaryngologist, he has not engaged in clinical practice in almost ten (10) years, and he has made no attempts to update his clinical skills. As a result, public safety requires that he must be proctored in the performance of surgeries for some time during the probationary period. In determining the appropriate number of proctored surgeries needed, the

Board has used the standard number used in most clinical training programs.

The Board has adopted the Manual of Model Disciplinary Orders and Disciplinary Guidelines (11th ed., 2011), and “Disciplinary Guidelines and Exceptions for Uniform Standards Related to Substance-Abusing Licensees” (Guidelines). (Cal. Code Regs., tit. 16, § 1361.) Under the Guidelines, if a licensee is disciplined for unprofessional conduct involving the use of illegal drugs, the licensee is presumed to be a “substance-abusing licensee” and subject to the various terms and conditions of probation outlined in the Uniform Standards for Substance-Abusing Licensees. (Cal. Code Regs., tit. 16, § 1361, subd. (b), and § 1361.5, subd. (a).)

While a petition for reinstatement is not a disciplinary proceeding, these Guidelines are applicable to the instant case because petitioner’s substance abuse led to revocation of his medical license. To exempt petitioner from the reach of the Guidelines would contravene the Board’s overriding interest in protecting the public from licensees who have a documented substance abuse problem. The probation conditions in the Guidelines shall be imposed upon petitioner, in addition to other probationary terms, for the protection of the public. Insofar as Dr. Skipper persuasively opined that limitations on petitioner’s prescribing practices were not necessary to protect the public, none will be imposed.

ORDER

The Petition for Reinstatement of petitioner Li Quang Nguyen, M.D., is granted, and Physician’s and Surgeon’s Certificate No. G 63837 is restored; however, the certificate is revoked and placed on probation for five years upon the following terms and conditions:

1. Clinical Diagnostic Evaluations and Reports

Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, petitioner shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed board certified physician and surgeon. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon who holds a valid, unrestricted license, has three years’ experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with petitioner within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation. The clinical

diagnostic evaluation report shall set forth, in the evaluator's opinion, whether petitioner has a substance abuse problem, whether petitioner is a threat to himself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to petitioner's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that petitioner is a threat to himself or others, the evaluator shall notify the Board within 24 hours of such a determination.

In formulating his or her opinion as to whether petitioner is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the following factors: petitioner's license type; petitioner's history; petitioner's documented length of sobriety (i.e., length of time that has elapsed since petitioner's last substance use); petitioner's scope and pattern of substance abuse; petitioner's treatment history, medical history and current medical condition; the nature, duration and severity of petitioner's substance abuse problem or problems; and whether petitioner is a threat to himself or the public. For all clinical diagnostic evaluations, a final written report shall be provided to the Board no later than 10 days from the date the evaluator is assigned the matter. If the evaluator requests additional information or time to complete the evaluation and report, an extension may be granted, but shall not exceed 30 days from the date the evaluator was originally assigned the matter.

The Board shall review the clinical diagnostic evaluation report within five business days of receipt to determine whether petitioner is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on petitioner based on the recommendations made by the evaluator. Petitioner shall not be returned to practice until he has at least 30 days of negative biological fluid tests or biological fluid tests indicating that he has not used, consumed, ingested, or administered to himself a prohibited substance, as defined in section 1361.51, subdivision (e), of title 16 of the California Code of Regulations.

Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic evaluation, including any and all testing deemed necessary by the examiner, the Board or its designee, shall be borne by the licensee.

Petitioner shall not engage in the practice of medicine until notified by the Board or its designee that he is fit to practice medicine safely. The period of time that petitioner is not practicing medicine shall not be counted toward completion of the term of probation. Petitioner shall undergo biological fluid testing as required in this Decision at least two times per week while awaiting the notification from the Board if he is fit to practice medicine safely.

Petitioner shall comply with all restrictions or conditions recommended by the examiner conducting the clinical diagnostic evaluation within 15 calendar days after being notified by the Board or its designee.

2. Notice of Employer or Supervisor Information

To the extent that petitioner has supervisors or employers during his probationary period, petitioner shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Petitioner shall also provide specific, written consent for the Board, petitioner's worksite monitor, and petitioner's employers and supervisors to communicate regarding petitioner's work status, performance, and monitoring.

For purposes of this section, "supervisors" shall include the Chief of Staff and Health or Well Being Committee Chair, or equivalent, if applicable, when petitioner has medical staff privileges.

3. Controlled Substances -Abstain From Use

Petitioner shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to petitioner by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, petitioner shall notify the Board or its designee of the: issuing practitioner's name, address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

If petitioner has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, petitioner shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Petitioner shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide petitioner with a hearing within 30 days of the request, unless petitioner stipulates to a later hearing. A decision shall be received from the administrative law judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide petitioner with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

4. Alcohol -Abstain From Use

Petitioner shall abstain completely from the use of products or beverages containing alcohol.

If petitioner has a confirmed positive biological fluid test for alcohol, petitioner shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Petitioner shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide petitioner with a hearing within 30 days of the request, unless petitioner stipulates to a later hearing. A decision shall be received from the administrative law judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide petitioner with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

5. Biological Fluid Testing

Petitioner shall immediately submit to biological fluid testing, at petitioner's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Petitioner shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Petitioner shall be tested on the date of the notification as directed by the Board or its designee. The Board may order petitioner to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the Board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by petitioner.

During the first year of probation, petitioner shall be subject to 52 to 104 random tests.

During the second year of probation and for the duration of the probationary term, up to five years, petitioner shall be subject to 36 to 104 random tests per year. Only if there has been no positive biological fluid tests in the previous five consecutive years of probation, may testing be reduced to one time per month. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

Prior to practicing medicine, petitioner shall contract with a laboratory or service, approved in advance by the Board or its designee, that will conduct random, unannounced, observed, biological fluid testing and meets all the following standards:

- (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.
- (b) Its specimen collectors conform to the current United States Department of Transportation Specimen Collection Guidelines.
- (c) Its testing locations comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.
- (d) Its specimen collectors observe the collection of testing specimens.
- (e) Its laboratories are certified and accredited by the United States Department of Health and Human Services.
- (f) Its testing locations shall submit a specimen to a laboratory within one business day of receipt and all specimens collected shall be handled pursuant to chain of custody procedures. The laboratory shall process and analyze the specimens and provide legally defensible test results to the Board within seven business days of receipt of the specimen. The Board will be notified of non-negative results within one business day and will be notified of negative test results within seven business days.
- (g) Its testing locations possess all the materials, equipment, and technical expertise necessary in order to test petitioner on any day of the week.
- (h) Its testing locations are able to scientifically test for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.
- (i) It maintains testing sites located throughout California.
- (j) It maintains an automated 24-hour toll-free telephone system and/or a

secure on-line computer database that allows petitioner to check in daily for testing.

(k) It maintains a secure, HIPAA-compliant website or computer system that allows staff access to drug test results and compliance reporting information that is available 24 hours a day.

(l) It employs or contracts with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory biological fluid test results, medical histories, and any other information relevant to biomedical information.

(m) It will not consider a toxicology screen to be negative if a positive result is obtained while practicing, even if petitioner holds a valid prescription for the substance.

Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements above.

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within one business day and negative test results within seven business days of the results becoming available. Petitioner shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and petitioner.

If a biological fluid test result indicates petitioner has used, consumed, ingested, or administered to himself a prohibited substance, the Board shall order petitioner to cease practice and instruct petitioner to leave any place of work where petitioner is practicing medicine or providing medical services. The Board shall immediately notify all of petitioner's employers, supervisors and work monitors, if any, that petitioner may not practice medicine or provide medical services while the cease-practice order is in effect.

A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited substance use exists, the Board shall lift the cease-practice order within one business day.

After the issuance of a cease-practice order, the Board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory, communicating with the licensee, his treating physician(s), other health care provider, or group

facilitator, as applicable.

For purposes of this condition, the terms “biological fluid testing” and “testing” mean the acquisition and chemical analysis of petitioner’s urine, blood, breath, or hair.

For purposes of this condition, the term “prohibited substance” means an illegal drug, a lawful drug not prescribed or ordered by an appropriately licensed health care provider for use by petitioner and approved by the Board, alcohol, or any other substance petitioner has been instructed by the Board not to use, consume, ingest, or administer to himself.

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, petitioner has committed a major violation, as defined in section 1361.52, subdivision (a), and the Board shall impose any or all of the consequences set forth in section 1361.52, subdivision (b), in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance petitioner’s rehabilitation.

6. Substance Abuse Support Group Meetings

Within 30 days of the effective date of this Decision, petitioner shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which he shall attend for the duration of probation. Petitioner shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Petitioner shall pay all substance abuse support group meeting costs.

The facilitator of the substance abuse support group meeting shall have a minimum of three years’ experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or nationally certified organizations. The facilitator shall not have a current or former financial, personal, or business relationship with petitioner within the last five years. Petitioner’s previous participation in a substance abuse group support meeting led by the same facilitator does not constitute a prohibited current or former financial, personal, or business relationship.

The facilitator shall provide a signed document to the Board or its designee showing petitioner’s name, the group name, the date and location of the meeting, petitioner’s attendance, and petitioner’s level of participation and progress. The facilitator shall report any unexcused absence by petitioner from any substance abuse support group meeting to the Board, or its designee, within 24 hours of the unexcused absence.

7. Solo Practice Prohibition

Petitioner is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) petitioner merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) petitioner is the sole physician practitioner at that location.

If petitioner fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the effective date of this Decision, petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Petitioner shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, petitioner's practice setting changes and petitioner is no longer practicing in a setting in compliance with this Decision, petitioner shall notify the Board or its designee within five calendar days of the practice setting change. If petitioner fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Petitioner shall not resume practice until an appropriate practice setting is established.

8. Worksite Monitor for Substance-Abusing Licensee

Within 30 calendar days of the effective date of this Decision, petitioner shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of one or more licensed physician and surgeon, other licensed health care professional if no physician and surgeon is available, or, as approved by the Board or its designee, a person in a position of authority who is capable of monitoring petitioner at work.

The worksite monitor shall not have a current or former financial, personal, or familial relationship with petitioner, or any other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board or its designee. If it is impractical for anyone but petitioner's employer to serve as the worksite monitor, this requirement may be waived by the Board or its designee, however, under no circumstances shall petitioner's worksite monitor be an employee or supervisee of the licensee.

The worksite monitor shall have an active unrestricted license with no disciplinary action within the last five years, and shall sign an affirmation that he

or she has reviewed the terms and conditions of petitioner's disciplinary order and agrees to monitor petitioner as set forth by the Board or its designee.

Petitioner shall pay all worksite monitoring costs.

The worksite monitor shall have face-to-face contact with petitioner in the work environment on as frequent a basis as determined by the Board or its designee, but not less than once per week; interview other staff in the office regarding petitioner's behavior, if requested by the Board or its designee; and review petitioner's work attendance.

The worksite monitor shall verbally report any suspected substance abuse to the Board and petitioner's employer or supervisor within one business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board or its designee within one hour of the next business day. A written report that includes the date, time, and location of the suspected abuse; petitioner's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board or its designee within 48 hours of the occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the Board or its designee which shall include the following: (1) petitioner's name and Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3) the worksite monitor's license number, if applicable; (4) the location or location(s) of the worksite; (5) the dates petitioner had face-to-face contact with the worksite monitor; (6) the names of worksite staff interviewed, if applicable; (7) a report of petitioner's work attendance; (8) any change in petitioner's behavior and/or personal habits; and (9) any indicators that can lead to suspected substance abuse by petitioner. Petitioner shall complete any required consent forms and execute agreements with the approved worksite monitor and the Board, or its designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

If the worksite monitor resigns or is no longer available, petitioner shall, within five calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If petitioner fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Petitioner shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

9. Controlled Substances – Maintain Records and Access to Records and Inventories

Petitioner shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by petitioner, and any recommendation or approval which enables a patient or a patient's primary caregiver to possess or cultivate marijuana for personal medical purposes of the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all the following: 1) the name and address of patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Petitioner shall keep these records in a separate file or ledger, in chronological order. All records and inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

10. Clinical Training Program

Within 60 calendar days of the effective date of this Decision, petitioner shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California -San Diego School of Medicine ("Program"). Petitioner shall successfully complete the Program not later than six months after petitioner's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of petitioner's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to petitioner's area of practice, and at minimum, a 40-hour program of clinical education in petitioner's area of expertise and which takes into account data obtained from the assessment, Decision, Petition for Reinstatement, and any other information that the Board or its designee deems relevant. Petitioner shall pay all expenses associated with the clinical training program.

Based on petitioner's performance and test results in the assessment and clinical education, the Program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting petitioner's practice of medicine. Petitioner shall comply with Program recommendations.

At the completion of any additional educational or clinical training, petitioner shall submit to and pass an examination. Determination as to whether petitioner successfully completed the examination or successfully completed the program is solely within the program's jurisdiction.

Petitioner shall not practice medicine until petitioner has successfully completed the Program and has been so notified by the Board or its designee in writing, except that petitioner may practice in a clinical training program approved by the Board or its designee. Petitioner's practice of medicine shall be restricted only to that which is required by the approved training program.

11. Proctoring Requirements

Petitioner is prohibited from independently performing surgeries of any kind until he has participated as an assistant physician and surgeon in twenty-five (25) proctored surgeries. In addition, Petitioner is prohibited from independently performing surgeries until he has performed twenty-five (25) surgeries as the primary physician and surgeon with a proctor approved by the Board or its designee who shall act as the assistant physician and surgeon for those cases. All proctored surgeries under this condition shall be completed by the twenty-fourth (24th) month of probation.

The proctor must have a license that is valid and in good standing and must be certified by the American Board of Medical Specialties ("ABMS") or American Osteopathic Association ("AOA") affiliated board. A physician and surgeon licensed in another state may be approved as a proctor, provided all of the other requirements are met. The Board or its designee shall provide the proctor with a copy of the Stipulation for a Probationary License, and this Decision After Non-Adoption ("Decision"). Within fifteen (15) calendar days of receipt, the proctor shall submit a signed statement that he or she has read the Stipulation and Decision and understands the role of the proctor.

The approved proctor(s) shall keep a log of all procedures in which Petitioner participated as the assistant physician and surgeon. The log shall contain: 1) the patient's name or the patient's medical record number; 2) the date the surgery was performed; and 3) the surgical procedure performed. Petitioner shall keep this log in a separate file or ledger, in chronological order, shall make the log available for immediate inspection and copying on the premises at all times during business hours for the Board or its designees, and shall retain the log for the entire term of probation.

The approved proctor(s) shall submit a quarterly report to the Board or its designee which includes an evaluation of Petitioner's performance, indicating whether Petitioner's practices are within the standards of practice of medicine and whether Petitioner is practicing medicine safely. It shall be the sole responsibility of Petitioner to ensure that the proctor submits the quarterly written reports to the

Board or its designee within ten (10) calendar days after the end of the preceding quarter.

The proctoring requirement shall remain operative until Petitioner successfully, in the opinion of his proctor(s), has completed twenty-five (25) surgeries as the assistant physician and surgeon, and twenty-five (25) surgeries as the primary physician and surgeon. The proctor(s) shall notify the board or its designee in writing when these requirements have been met by the Petitioner.

The proctor shall provide reports to the Board or its designee on the outcome of the surgeries performed by the Petitioner to include the following information: 1) total cases completed; 2) surgical skill observations; and 3) complications, if any. At the Board's or its designee's discretion, the proctor(s)' report(s) may be reviewed by a Board expert.

Petitioner shall be responsible for any costs associated with the required proctoring.

12. Violation of Probation Condition for Substance-Abusing Licensees

Failure to fully comply with any term or condition of probation is a violation of probation.

A. If petitioner commits a major violation of probation as defined by section 1361.52, subdivision (a), of title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

(1) Issue an immediate cease-practice order and order Petitioner to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of title 16 of the California Code of Regulations, at petitioner's expense. The cease-practice order issued by the Board or its designee shall state that petitioner must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice. For purposes of determining the length of time a petitioner must test negative while undergoing continuous biological fluid testing following issuance of a cease-practice order, a month is defined as 30 calendar days. Petitioner may not resume the practice of medicine until notified in writing by the Board or its designee that he may do so.

(2) Increase the frequency of biological fluid testing.

(3) Refer petitioner for further disciplinary action, such as suspension, revocation, or other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (b).)

B. If petitioner commits a minor violation of probation as defined by section 1361.52, subdivision (c), of title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

- (1) Issue a cease-practice order;
- (2) Order practice limitations;
- (3) Order or increase supervision of petitioner;
- (4) Order increased documentation;
- (5) Issue a citation and fine, or a warning letter;
- (6) Order petitioner to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of title 16 of the California Code of Regulations, at petitioner's expense;
- (7) Take any other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (d).)

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke petitioner's probation if he has violated any term or condition of probation. (See Cal. Code Regs., tit. 16, § 1361.52, subd. (e).) If petitioner violates probation in any respect, the Board, after giving petitioner notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against petitioner during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

13. Supervision of Physician Assistants

During probation, petitioner is prohibited from supervising physician assistants.

14. Obey All Laws Petitioner shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

15. Quarterly Declarations

Petitioner shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Petitioner shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

16. Compliance with Probation Unit

Petitioner shall comply with the Board's probation unit and all terms and conditions of this Decision.

17. Address Changes

Petitioner shall, at all times, keep the Board informed of petitioner's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

18. Place of Practice

Petitioner shall not engage in the practice of medicine in petitioner's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

19. License Renewal

Petitioner shall maintain a current and renewed California Physician's and Surgeon's Certificate.

20. Travel or Residence Outside California

Petitioner shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar days.

In the event petitioner should leave the State of California to reside or to practice petitioner shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

21. Interview with the Board or its Designee

Petitioner shall be available in person upon request for interviews either at petitioner's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

22. Non-practice While on Probation

Petitioner shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of petitioner's return to practice. Non-practice is defined as any period of time petitioner is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event petitioner's period of non-practice while on probation exceeds 18 calendar months, petitioner shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Petitioner's period of non-practice while on probation shall not exceed two years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice will relieve petitioner of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws and General Probation Requirements.

23. License Surrender

Following the effective date of this Decision, if petitioner ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, petitioner may request to surrender his license. The Board reserves the right to evaluate petitioner's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, petitioner shall within 15 calendar days deliver petitioner's wallet and wall certificate to the Board or its designee and petitioner shall no longer practice medicine. Petitioner will no longer be subject to the terms and conditions of probation. If petitioner re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

24. Probation Monitoring Costs

Petitioner shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

25. Completion of Probation

Petitioner shall comply with all financial obligations (e.g., probation costs) not later than 120 calendar day prior to the completion of probation. Upon successful completion of probation, petitioner's certificate shall be fully restored.

This Decision shall become effective on December 30, 2016

IT IS SO ORDERED: December 2, 2016.

A handwritten signature in black ink, reading "Michelle Anne Bholat MD".

Michelle Anne Bholat, M.D., Chair
Panel B

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition for Reinstatement)	
of:)	
Li Quang Nguyen)	Case No.: 800-2015-014647
Physician's & Surgeon's)	
Certificate No: G 63837)	OAH No.: 2016030222
Respondent)	
_____)	

**ORDER OF NON-ADOPTION
OF PROPOSED DECISION**

The Proposed Decision of the Administrative Law Judge in the above-entitled matter has been **non-adopted**. A panel of the Medical Board of California (Board) will decide the case upon the record, including the transcript and exhibits of the hearing, and upon such written argument as the parties may wish to submit directed to the question of whether the proposed penalty should be modified. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

To order a copy of the transcript, please contact Diamond Court Reporters, 1107 2nd Street, Ste. 210, Sacramento, CA 95814. The telephone number is 916-498-9288


To order a copy of the exhibits, please submit a written request to this Board.

In addition, oral argument will only be scheduled if a party files a request for oral argument with the Board within 20 days from the date of this notice. If a timely request is filed, the Board will serve all parties with written notice of the time, date and place for oral argument. Oral argument shall be directed only to the question of whether the proposed penalty should be modified. Please do not attach to your written argument any documents that are not part of the record as they cannot be considered by the Panel. The Board directs the parties attention to Title 16 of the California Code of Regulations, sections 1364.30 and 1364.32 for additional requirements regarding the submission of oral and written argument.

Please remember to serve the opposing party with a copy of your written argument and any other papers you might file with the Board. The mailing address of the Board is as follows:

MEDICAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1200
Sacramento, CA 95815-3831
916-263-2451
Attention: Dianne Richards

Date: August 5, 2016


Howard Krauss, M.D. Chair
Panel B

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Petition for
Reinstatement of:

LI QUANG NGUYEN,

Physician's and Surgeon's Certificate
No. G 63837

Petitioner.

Case No. 800-2015-014647

OAH No. 2016030222

PROPOSED DECISION

Administrative Law Judge Diane Schneider, State of California, Office of Administrative Hearings, heard this matter on May 31, 2016, in Oakland, California.

Deputy Attorney General Greg W. Chambers represented the Office of the Attorney General, Department of Justice.

Petitioner Li Quang Nguyen, M.D., was represented by Kevin D. Cauley, Attorney at Law.

The record closed, and the matter was submitted on May 31, 2016.

FACTUAL FINDINGS

Procedural history

1. On August 22, 1988, the Medical Board of California (Board) issued Physician's and Surgeon's Certificate No. G 63837 to petitioner Li Quang Nguyen, M.D. Petitioner's certificate was revoked, effective November 24, 2008.

2. On June 2, 2015, petitioner filed with the Board a Petition for Reinstatement of Revoked/Surrendered Certificate (Petition). This hearing followed.

Petitioner's personal and medical background, training and practice

3. Petitioner was born and raised in Saigon, Vietnam. He came to the United States when he was 14 years old, when North Vietnam took over South Vietnam. He did not speak a word of English when he arrived. Petitioner learned quickly, however, and entered college at Cal Poly, Pomona, at age 16 and graduated at age 19 with degrees in biology and chemistry.

4. Petitioner attended medical school at the University of California, Los Angeles (U.C.L.A.), where he was a top student. Following his graduation from medical school he completed an internship in general surgery and a residency in otolaryngology. Petitioner was licensed in 1988, and in 1999, he was board certified in otolaryngology and plastic surgery.

5. Petitioner opened a private practice in general otolaryngology in Westminster. He was well-known in the community, had many patients and privileges at several hospitals, and worked six to seven days each week.

Disciplinary history

6. In 2003 the Board issued a citation to petitioner for failing to maintain adequate and accurate medical records. Petitioner received a public reprimand in 2005, pursuant to a Stipulated Settlement and Disciplinary Order, for striking a branch of a patient's carotid artery.

Circumstances leading to drug abuse and revocation of medical certificate

7. Petitioner was happily married until 2006, when he learned that his wife was having affairs with other men. The separation and divorce was, in petitioner's words, "messy." He explained that he "filled the void" of being alone with parties, and eventually the parties led to his use of illegal drugs.

8. Petitioner found another relationship, but when his girlfriend kicked him out of their home in July 2007, he checked into a hotel. On July 27, 2007, police officers entered his hotel room for a welfare check and arrested him after finding cocaine and drug paraphernalia in his room. Petitioner had stopped practicing medicine about six months before his arrest out of concern that he was not in "good enough condition" to practice medicine.

9. On April 8, 2008, petitioner pled no contest to violating Health and Safety Code sections 11350, subdivision (a) (unlawful possession of a controlled substance), a felony, and 11364 (possession of drug paraphernalia), a misdemeanor. His pleas were entered pursuant to Penal Code section 1000, which authorized the court to defer entry of judgement while petitioner participated in a drug program.

10. Petitioner's medical certificate was revoked, effective November 24, 2008, following an administrative hearing and decision by the Board. Almost one year later, on October 8, 2009, in the Superior Court, County of Orange, the court dismissed the criminal charges against petitioner based upon his successful completion of his diversion drug program.

Rehabilitation evidence

CHANGE IN ATTITUDE

11. Petitioner realizes that during his administrative hearing in September 2008 he was early in his recovery. Petitioner describes this period as the "lowest point in his life." Petitioner was so ashamed of himself that he almost took his life. In the eight years since his license was revoked petitioner has had a significant and genuine change in his attitude: he has transformed himself from someone who denied his addiction into someone who embraces it. He works every day to maintain his sobriety. In petitioner's words, his drug rehabilitation "saved him." Petitioner is firmly committed to leading a productive and law-abiding life and wants nothing more than to return to the practice of medicine, which he finds truly rewarding. Through his drug abuse treatment petitioner has learned that his "main trigger" is isolation, as it brings up memories of his separation from his wife and children. Therefore, petitioner avoids becoming isolated. He currently lives with his parents in a house that he bought for them years ago.

PARTICIPATION IN 12-STEP PROGRAMS, THERAPY AND DRUG TESTING

12. Petitioner's sobriety date is April 8, 2008. When petitioner was placed on diversion he participated in a rehabilitation program through South Coast Counseling Center. This program included individual and group counseling sessions and substance abuse meetings, and adherence to a 12-step program. Petitioner was also randomly drug tested to ensure his sobriety.

13. Petitioner participated in random drug testing from August 2012 to November 2012 with negative results. Petitioner has also undergone random drug testing (urine and hair) since October 2014, and all of his tests have been negative.

14. Petitioner signed a contract on June 22, 2015, with Pacific Assistance Group (PAG). PAG provides professionals with monitoring and support to remain sober, and those engaged in the program agree to abide by PAG's treatment requirements. Petitioner currently attends seven recovery meetings per week. Two of the meetings are with other professionals, through PAG; and the five others are 12-step meetings (alcoholics and/or narcotics anonymous). Petitioner has worked the 12-steps three times; he is currently working on step four.

EVALUATIONS REGARDING PETITIONER'S SAFETY TO PRACTICE

15. Psychologist Carrie Jaffe, Ph.D. performed a comprehensive substance abuse assessment of petitioner in December 2012.¹ In a report dated January 28, 2013, Jaffe concluded that petitioner did not exhibit a substance abuse problem. She wrote:

There is no evidence from Dr. Nguyen's history to suggest any history of drug addiction or alcoholism, let alone heavy use of either substance throughout his life.

16. Gregory Skipper, M.D., testified at hearing. He is the Director of Professionals Health Services at Promises Treatment Centers in Los Angeles. Dr. Skipper is board-certified in addiction medicine and has extensive training and experience in the field of addiction medicine. He specializes in treating professionals and, for many years, performed work on behalf of licensing boards.

17. Dr. Skipper initially evaluated applicant on March 24 and June 18, 2014; he also performed a follow-up evaluation on February 10, 2015. In a report dated February 10, 2015, Dr. Skipper diagnoses petitioner with cocaine use disorder, moderate, early remission. He notes that petitioner's narcissistic traits had improved, in that petitioner had become more humble. Dr. Skipper opines that petitioner's insight into his addiction had improved since the prior evaluation. He concludes that petitioner is fit to return to work as a physician as long as he continues to abstain from using illicit drugs, participates in random drug testing, attends 12-step meetings at least one to two times each week and participates in a physician monitoring group. While Dr. Skipper agreed that it is always possible that an individual with substance use disorder will relapse, he believes that petitioner is safe to practice if he continues with his rehabilitation program and if random drug testing and an onsite monitor are required. Dr. Skipper believes that with these safeguards in place, petitioner is sufficiently rehabilitated to the extent that it is unnecessary to limit petitioner's ability to prescribe medicine. Dr. Skipper's testimony was persuasive.

INVOLVEMENT WITH THE PRACTICE OF MEDICINE

18. After losing his license petitioner created a medical device company, Automatic Subthermal Injection System (ASIS). Petitioner is the Chief Operating Officer of ASIS Corporation in Westminster. ASIS has a patent for a medical device used for administering injections. Petitioner works at ASIS, Inc., and IDIT, Inc., in Westminster.

19. Petitioner has recently co-authored three published articles: Nguyen, L., Nguyen, H., Phung, and Sercarz, Subdermal Bloodless Space and Prolongation of Collagen in Rats, ASJ International Journal of Advances in Medical Sciences and Biotechnology,

¹ Petitioner obtained this evaluation with the expectation of filing a petition for reinstatement. He was unable to move forward for financial reasons, however, and waited several years before filing his petition.

Vol. 2 (1), May 2014, pp. 1-5; Nguyen, L., Nguyen, H., Phung, and Sercarz, Monitoring Human Muscular Contractions with Accelerometer, ASJ International Journal of Advances in Medical Sciences and Biotechnology, Vol. 2 (1), May 2014, pp. 6-10; Nguyen, L., Nguyen, H., Phung, and Sercarz, Subdermal Injection of Gadolinium with ASIS Device in Normal Humans' Glabella, International Journal of Medicine and Medical Science Research, Vol. 2 (4), May 2014, pp. 48-52.

20. Petitioner has been out of the practice of medicine for about seven years. Because patient safety is of utmost importance to him, petitioner is willing to participate in the Physician Assessment and Clinical Education Program at the University of California San Diego (UCSD) School of Medicine.

21. Petitioner loves the practice of medicine and wants nothing more than to regain his license. If he becomes licensed he would like to work as a solo practitioner, and also continue working in a more productive capacity in his medical device company.

CONTINUING MEDICAL EDUCATION

22. Petitioner has participated in 150 hours of continuing medical education through the American Medical Association, and he reads various professional journals to keep himself current with developments in his specialty.

CHARACTER EVIDENCE

23. Two doctors testified at hearing, and another doctor submitted a letter supporting petitioner's reinstatement:

a. Dr. Joel Sercarz, M.D., is a Professor of Surgery at U.C.L.A. Medical School. Dr. Sercarz testified at hearing. He supervised the completion of petitioner's medical training and describes petitioner as a "very gifted surgeon whose operative skills would rank him in the top 5 [percent] of otolaryngologists trained at U.C.L.A. since [he] became a faculty member there 23 years ago." He also describes petitioner as a "good person with a warm heart." Dr. Sercarz has been involved with petitioner's medical device company and co-authored several articles with him.

Dr. Sercarz is aware of petitioner's arrest and addiction to cocaine. He describes petitioner as being "very, very serious" about his recovery. Dr. Sercarz believes that it is the "right thing" to afford petitioner a "second chance" to resume his career. For these reasons, Dr. Sercarz strongly recommends petitioner for license reinstatement and would easily entrust petitioner with caring for his family.

b. Thanh G. Phung, M.D., practices radiology in an office adjacent to petitioner's former medical office. Dr. Phung testified at hearing. He has known petitioner for over 20 years and worked together on many cases. Dr. Phung has also been involved with

petitioner's medical device company and co-authored several articles with him. He believes that

Dr. Nguyen is a very gifted surgeon with operative skills that would rank him among the top surgeons within the community. He is very compassionate and caring with his patients and well respected by ancillary staff and among his colleagues.

Dr. Phung is aware of petitioner's drug problem, and observes that petitioner has not shown any evidence of drug addiction or alcoholism, and that petitioner's attendance at AA meetings appears to have helped him. Dr. Phung strongly recommends that petitioner's license be reinstated.

c. Athena Phan, M.D., met petitioner when they were residents at U.C.L.A. In a letter dated April 14, 2015, she describes petitioner as a "star resident with excellent surgical skills." Dr. Phan writes that she interacted with petitioner when they shared office space on the weekends to practice cosmetic surgeries. Dr. Phan describes petitioner as being "well suited to deal with the challenges of otolaryngology," and strongly supports his petition for reinstatement.

CREDIBILITY FINDING

24. Petitioner's testimony was credible and candid in all respects.

LEGAL CONCLUSIONS

1. Pursuant to Business and Professions Code section 2307, subdivision (b)(1), reinstatement petitions may be filed three years after an individual's license is revoked for unprofessional conduct. In the instant case, petitioner's petition is timely in that it was filed almost seven years after his license was revoked.

2. The burden rests on petitioner to prove that he is sufficiently rehabilitated to the extent that it would not be contrary to the public interest to have his license restored. (*Flanzer v. Board of Dental Examiners* (1990) 220 Cal.App.3d 1392, 1398.) The standard of proof is clear and convincing evidence. (*Housman v. Board of Medical Examiners* (1948) 84 Cal.App.2d 308, 315-316; cf. *In re Menna* (1995) 11 Cal.4th 975, 986.)

3. The primary purpose of this proceeding is to protect the public, not to punish the licensee. (See e.g., *Camacho v. Youde* (1979) 95 Cal.App.3d 161, 164.) This view is consistent with the Medical Practice Act, which provides that in exercising its disciplinary authority the board's highest priority is protection of the public. (Bus. & Prof. Code, § 2229, subd. (a).) At the same time, the Legislature has directed the Board to exercise its disciplinary authority in a manner that is calculated to aid in the rehabilitation of the licensee. (Bus. & Prof. Code, § 2229, subd. (b).)

4. Business and Professions Code section 2307, subdivision (e), provides that relevant factors to consider concerning a petition for reinstatement include “all activities of the petitioner since the disciplinary action was taken, the offense for which the petitioner was disciplined, the petitioner’s activities during the time the certificate was in good standing, and the petitioner’s rehabilitative efforts, general reputation for truth, and professional ability.”

Determination and discussion of appropriate terms and conditions of probation

5. Based upon a review of the relevant factors, including the passage of years since the illegal conduct, it is concluded that clear and convincing evidence exists for reinstatement of petitioner’s medical license subject to probationary conditions that are designed to ensure that he maintains his abstinence from using illicit drugs. The factors considered in making this determination include the following: While petitioner’s drug addiction is a very serious matter, the evidence established that petitioner has learned from his past mistakes and is now extremely committed to living a sober and law-abiding life. Although following his arrest, petitioner refused to acknowledge his drug addiction, for the past eight years he has embraced it and has demonstrated a steady and sincere effort to maintain his sobriety. In light of petitioner’s strong showing of rehabilitation it would not be against the public interest to grant his petition, and place his certificate on probation for a period of five years.

The Board has adopted the Manual of Model Disciplinary Orders and Disciplinary Guidelines (11th ed., 2011), and “Disciplinary Guidelines and Exceptions for Uniform Standards Related to Substance-Abusing Licensees” (Guidelines). (Cal. Code Regs., tit. 16, § 1361.) Under the Guidelines, if a licensee is disciplined for unprofessional conduct involving the use of illegal drugs, the licensee is presumed to be a “substance-abusing licensee” and subject to the various terms and conditions of probation outlined in the Uniform Standards for Substance-Abusing Licensees. (Cal. Code Regs., tit. 16, § 1361, subd. (b), and § 1361.5, subd. (a).)

While a petition for reinstatement is not a disciplinary proceeding, these Guidelines are applicable to the instant case because petitioner’s substance abuse led to revocation of his medical license. To exempt petitioner from the reach of the Guidelines would contravene the Board’s overriding interest in protecting the public from licensees who have a documented substance abuse problem. The probation conditions in the Guidelines shall be imposed upon petitioner, in addition to other probationary terms, for the protection of the public. Insofar as Dr. Skipper persuasively opined that limitations on petitioner’s prescribing practices were not necessary to protect the public, none will be imposed.

ORDER

The Petition for Reinstatement of petitioner Li Quang Nguyen, M.D., is granted, and Physician's and Surgeon's Certificate No. G 63837 is restored; however, the certificate is revoked and placed on probation for five years upon the following terms and conditions:

1. Clinical Diagnostic Evaluations and Reports

Within 30 calendar days of the effective date of this Decision, and on whatever periodic basis thereafter as may be required by the Board or its designee, petitioner shall undergo and complete a clinical diagnostic evaluation, including any and all testing deemed necessary, by a Board-appointed board certified physician and surgeon. The examiner shall consider any information provided by the Board or its designee and any other information he or she deems relevant, and shall furnish a written evaluation report to the Board or its designee.

The clinical diagnostic evaluation shall be conducted by a licensed physician and surgeon who holds a valid, unrestricted license, has three years' experience in providing evaluations of physicians and surgeons with substance abuse disorders, and is approved by the Board or its designee. The clinical diagnostic evaluation shall be conducted in accordance with acceptable professional standards for conducting substance abuse clinical diagnostic evaluations. The evaluator shall not have a current or former financial, personal, or business relationship with petitioner within the last five years. The evaluator shall provide an objective, unbiased, and independent evaluation. The clinical diagnostic evaluation report shall set forth, in the evaluator's opinion, whether petitioner has a substance abuse problem, whether petitioner is a threat to himself or others, and recommendations for substance abuse treatment, practice restrictions, or other recommendations related to petitioner's rehabilitation and ability to practice safely. If the evaluator determines during the evaluation process that petitioner is a threat to himself or others, the evaluator shall notify the Board within 24 hours of such a determination.

In formulating his or her opinion as to whether petitioner is safe to return to either part-time or full-time practice and what restrictions or recommendations should be imposed, including participation in an inpatient or outpatient treatment program, the evaluator shall consider the following factors: petitioner's license type; petitioner's history; petitioner's documented length of sobriety (i.e., length of time that has elapsed since petitioner's last substance use); petitioner's scope and pattern of substance abuse; petitioner's treatment history, medical history and current medical condition; the nature, duration and severity of petitioner's substance abuse problem or problems; and whether petitioner is a threat to himself or the public. For all clinical

diagnostic evaluations, a final written report shall be provided to the Board no later than 10 days from the date the evaluator is assigned the matter. If the evaluator requests additional information or time to complete the evaluation and report, an extension may be granted, but shall not exceed 30 days from the date the evaluator was originally assigned the matter.

The Board shall review the clinical diagnostic evaluation report within five business days of receipt to determine whether petitioner is safe to return to either part-time or full-time practice and what restrictions or recommendations shall be imposed on petitioner based on the recommendations made by the evaluator. Petitioner shall not be returned to practice until he has at least 30 days of negative biological fluid tests or biological fluid tests indicating that he has not used, consumed, ingested, or administered to himself a prohibited substance, as defined in section 1361.51, subdivision (e), of title 16 of the California Code of Regulations.

Clinical diagnostic evaluations conducted prior to the effective date of this Decision shall not be accepted towards the fulfillment of this requirement. The cost of the clinical diagnostic evaluation, including any and all testing deemed necessary by the examiner, the Board or its designee, shall be borne by the licensee.

Petitioner shall not engage in the practice of medicine until notified by the Board or its designee that he is fit to practice medicine safely. The period of time that petitioner is not practicing medicine shall not be counted toward completion of the term of probation. Petitioner shall undergo biological fluid testing as required in this Decision at least two times per week while awaiting the notification from the Board if he is fit to practice medicine safely.

Petitioner shall comply with all restrictions or conditions recommended by the examiner conducting the clinical diagnostic evaluation within 15 calendar days after being notified by the Board or its designee.

2. Notice of Employer or Supervisor Information

To the extent that petitioner has supervisors or employers during his probationary period, petitioner shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of any and all employers and supervisors. Petitioner shall also provide specific, written consent for the Board, petitioner's worksite monitor, and petitioner's employers and supervisors to communicate regarding petitioner's work status, performance, and monitoring.

For purposes of this section, “supervisors” shall include the Chief of Staff and Health or Well Being Committee Chair, or equivalent, if applicable, when petitioner has medical staff privileges.

3. Controlled Substances - Abstain From Use

Petitioner shall abstain completely from the personal use or possession of controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drugs as defined by Business and Professions Code section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed to petitioner by another practitioner for a bona fide illness or condition.

Within 15 calendar days of receiving any lawfully prescribed medications, petitioner shall notify the Board or its designee of the: issuing practitioner’s name, address, and telephone number; medication name, strength, and quantity; and issuing pharmacy name, address, and telephone number.

If petitioner has a confirmed positive biological fluid test for any substance (whether or not legally prescribed) and has not reported the use to the Board or its designee, petitioner shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Petitioner shall not resume the practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide petitioner with a hearing within 30 days of the request, unless petitioner stipulates to a later hearing. A decision shall be received from the administrative law judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide petitioner with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

4. Alcohol - Abstain From Use

Petitioner shall abstain completely from the use of products or beverages containing alcohol.

If petitioner has a confirmed positive biological fluid test for alcohol, petitioner shall receive a notification from the Board or its designee to immediately cease the practice of medicine. Petitioner shall not resume the

practice of medicine until final decision on an accusation and/or a petition to revoke probation. An accusation and/or petition to revoke probation shall be filed by the Board within 15 days of the notification to cease practice. If petitioner requests a hearing on the accusation and/or petition to revoke probation, the Board shall provide petitioner with a hearing within 30 days of the request, unless petitioner stipulates to a later hearing. A decision shall be received from the administrative law judge or the Board within 15 days unless good cause can be shown for the delay. The cessation of practice shall not apply to the reduction of the probationary time period.

If the Board does not file an accusation or petition to revoke probation within 15 days of the issuance of the notification to cease practice or does not provide petitioner with a hearing within 30 days of such a request, the notification of cease practice shall be dissolved.

5. Biological Fluid Testing

Petitioner shall immediately submit to biological fluid testing, at petitioner's expense, upon request of the Board or its designee. "Biological fluid testing" may include, but is not limited to, urine, blood, breathalyzer, hair follicle testing, or similar drug screening approved by the Board or its designee. Petitioner shall make daily contact with the Board or its designee to determine whether biological fluid testing is required. Petitioner shall be tested on the date of the notification as directed by the Board or its designee. The Board may order petitioner to undergo a biological fluid test on any day, at any time, including weekends and holidays. Except when testing on a specific date as ordered by the Board or its designee, the scheduling of biological fluid testing shall be done on a random basis. The cost of biological fluid testing shall be borne by petitioner.

During the first year of probation, petitioner shall be subject to 52 to 104 random tests.

During the second year of probation and for the duration of the probationary term, up to five years, petitioner shall be subject to 36 to 104 random tests per year. Only if there has been no positive biological fluid tests in the previous five consecutive years of probation, may testing be reduced to one time per month. Nothing precludes the Board from increasing the number of random tests to the first-year level of frequency for any reason.

Prior to practicing medicine, petitioner shall contract with a laboratory or service, approved in advance by the Board or its designee, that will conduct random, unannounced, observed, biological fluid testing and meets all the following standards:

- (a) Its specimen collectors are either certified by the Drug and Alcohol Testing Industry Association or have completed the training required to serve as a collector for the United States Department of Transportation.
- (b) Its specimen collectors conform to the current United States Department of Transportation Specimen Collection Guidelines.
- (c) Its testing locations comply with the Urine Specimen Collection Guidelines published by the United States Department of Transportation without regard to the type of test administered.
- (d) Its specimen collectors observe the collection of testing specimens.
- (e) Its laboratories are certified and accredited by the United States Department of Health and Human Services.
- (f) Its testing locations shall submit a specimen to a laboratory within one business day of receipt and all specimens collected shall be handled pursuant to chain of custody procedures. The laboratory shall process and analyze the specimens and provide legally defensible test results to the Board within seven business days of receipt of the specimen. The Board will be notified of non-negative results within one business day and will be notified of negative test results within seven business days.
- (g) Its testing locations possess all the materials, equipment, and technical expertise necessary in order to test petitioner on any day of the week.
- (h) Its testing locations are able to scientifically test for urine, blood, and hair specimens for the detection of alcohol and illegal and controlled substances.
- (i) It maintains testing sites located throughout California.
- (j) It maintains an automated 24-hour toll-free telephone system and/or a secure on-line computer database that allows petitioner to check in daily for testing.
- (k) It maintains a secure, HIPAA-compliant website or computer system that allows staff access to drug test results and compliance reporting information that is available 24 hours a day.
- (l) It employs or contracts with toxicologists that are licensed physicians and have knowledge of substance abuse disorders and the appropriate medical training to interpret and evaluate laboratory biological fluid test results.

medical histories, and any other information relevant to biomedical information.

(m) It will not consider a toxicology screen to be negative if a positive result is obtained while practicing, even if petitioner holds a valid prescription for the substance.

Prior to changing testing locations for any reason, including during vacation or other travel, alternative testing locations must be approved by the Board and meet the requirements above.

The contract shall require that the laboratory directly notify the Board or its designee of non-negative results within one business day and negative test results within seven business days of the results becoming available. Petitioner shall maintain this laboratory or service contract during the period of probation.

A certified copy of any laboratory test result may be received in evidence in any proceedings between the Board and petitioner.

If a biological fluid test result indicates petitioner has used, consumed, ingested, or administered to himself a prohibited substance, the Board shall order petitioner to cease practice and instruct petitioner to leave any place of work where petitioner is practicing medicine or providing medical services. The Board shall immediately notify all of petitioner's employers, supervisors and work monitors, if any, that petitioner may not practice medicine or provide medical services while the cease-practice order is in effect.

A biological fluid test will not be considered negative if a positive result is obtained while practicing, even if the practitioner holds a valid prescription for the substance. If no prohibited substance use exists, the Board shall lift the cease-practice order within one business day.

After the issuance of a cease-practice order, the Board shall determine whether the positive biological fluid test is in fact evidence of prohibited substance use by consulting with the specimen collector and the laboratory, communicating with the licensee, his treating physician(s), other health care provider, or group facilitator, as applicable.

For purposes of this condition, the terms "biological fluid testing" and "testing" mean the acquisition and chemical analysis of petitioner's urine, blood, breath, or hair.

For purposes of this condition, the term "prohibited substance" means an illegal drug, a lawful drug not prescribed or ordered by an appropriately

licensed health care provider for use by petitioner and approved by the Board, alcohol, or any other substance petitioner has been instructed by the Board not to use, consume, ingest, or administer to himself.

If the Board confirms that a positive biological fluid test is evidence of use of a prohibited substance, petitioner has committed a major violation, as defined in section 1361.52, subdivision (a), and the Board shall impose any or all of the consequences set forth in section 1361.52, subdivision (b), in addition to any other terms or conditions the Board determines are necessary for public protection or to enhance petitioner's rehabilitation.

6. Substance Abuse Support Group Meetings

Within 30 days of the effective date of this Decision, petitioner shall submit to the Board or its designee, for its prior approval, the name of a substance abuse support group which he shall attend for the duration of probation. Petitioner shall attend substance abuse support group meetings at least once per week, or as ordered by the Board or its designee. Petitioner shall pay all substance abuse support group meeting costs.

The facilitator of the substance abuse support group meeting shall have a minimum of three years' experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or nationally certified organizations. The facilitator shall not have a current or former financial, personal, or business relationship with petitioner within the last five years. Petitioner's previous participation in a substance abuse group support meeting led by the same facilitator does not constitute a prohibited current or former financial, personal, or business relationship.

The facilitator shall provide a signed document to the Board or its designee showing petitioner's name, the group name, the date and location of the meeting, petitioner's attendance, and petitioner's level of participation and progress. The facilitator shall report any unexcused absence by petitioner from any substance abuse support group meeting to the Board, or its designee, within 24 hours of the unexcused absence.

7. Solo Practice Prohibition

Petitioner is prohibited from engaging in the solo practice of medicine. Prohibited solo practice includes, but is not limited to, a practice where: 1) petitioner merely shares office space with another physician but is not affiliated for purposes of providing patient care, or 2) petitioner is the sole physician practitioner at that location.

If petitioner fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the effective date of this Decision, petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Petitioner shall not resume practice until an appropriate practice setting is established.

If, during the course of the probation, petitioner's practice setting changes and petitioner is no longer practicing in a setting in compliance with this Decision, petitioner shall notify the Board or its designee within five calendar days of the practice setting change. If petitioner fails to establish a practice with another physician or secure employment in an appropriate practice setting within 60 calendar days of the practice setting change, petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Petitioner shall not resume practice until an appropriate practice setting is established.

8. Worksite Monitor for Substance-Abusing Licensee

Within 30 calendar days of the effective date of this Decision, petitioner shall submit to the Board or its designee for prior approval as a worksite monitor, the name and qualifications of one or more licensed physician and surgeon, other licensed health care professional if no physician and surgeon is available, or, as approved by the Board or its designee, a person in a position of authority who is capable of monitoring petitioner at work.

The worksite monitor shall not have a current or former financial, personal, or familial relationship with petitioner, or any other relationship that could reasonably be expected to compromise the ability of the monitor to render impartial and unbiased reports to the Board or its designee. If it is impractical for anyone but petitioner's employer to serve as the worksite monitor, this requirement may be waived by the Board or its designee, however, under no circumstances shall petitioner's worksite monitor be an employee or supervisee of the licensee.

The worksite monitor shall have an active unrestricted license with no disciplinary action within the last five years, and shall sign an affirmation that he or she has reviewed the terms and conditions of petitioner's disciplinary order and agrees to monitor petitioner as set forth by the Board or its designee.

Petitioner shall pay all worksite monitoring costs.

The worksite monitor shall have face-to-face contact with petitioner in the work environment on as frequent a basis as determined by the Board or its designee, but not less than once per week; interview other staff in the office

regarding petitioner's behavior, if requested by the Board or its designee; and review petitioner's work attendance.

The worksite monitor shall verbally report any suspected substance abuse to the Board and petitioner's employer or supervisor within one business day of occurrence. If the suspected substance abuse does not occur during the Board's normal business hours, the verbal report shall be made to the Board or its designee within one hour of the next business day. A written report that includes the date, time, and location of the suspected abuse; petitioner's actions; and any other information deemed important by the worksite monitor shall be submitted to the Board or its designee within 48 hours of the occurrence.

The worksite monitor shall complete and submit a written report monthly or as directed by the Board or its designee which shall include the following: (1) petitioner's name and Physician's and Surgeon's Certificate number; (2) the worksite monitor's name and signature; (3) the worksite monitor's license number, if applicable; (4) the location or location(s) of the worksite; (5) the dates petitioner had face-to-face contact with the worksite monitor; (6) the names of worksite staff interviewed, if applicable; (7) a report of petitioner's work attendance; (8) any change in petitioner's behavior and/or personal habits; and (9) any indicators that can lead to suspected substance abuse by petitioner. Petitioner shall complete any required consent forms and execute agreements with the approved worksite monitor and the Board, or its designee, authorizing the Board, or its designee, and worksite monitor to exchange information.

If the worksite monitor resigns or is no longer available, petitioner shall, within five calendar days of such resignation or unavailability, submit to the Board or its designee, for prior approval, the name and qualifications of a replacement monitor who will be assuming that responsibility within 15 calendar days. If petitioner fails to obtain approval of a replacement monitor within 60 calendar days of the resignation or unavailability of the monitor, petitioner shall receive a notification from the Board or its designee to cease the practice of medicine within three calendar days after being so notified. Petitioner shall cease the practice of medicine until a replacement monitor is approved and assumes monitoring responsibility.

9. Controlled Substances – Maintain Records and Access to Records and Inventories

Petitioner shall maintain a record of all controlled substances ordered, prescribed, dispensed, administered, or possessed by petitioner, and any recommendation or approval which enables a patient or a patient's primary caregiver to possess or cultivate marijuana for personal medical purposes of

the patient within the meaning of Health and Safety Code section 11362.5, during probation, showing all the following: 1) the name and address of patient; 2) the date; 3) the character and quantity of controlled substances involved; and 4) the indications and diagnosis for which the controlled substances were furnished.

Petitioner shall keep these records in a separate file or ledger, in chronological order. All records and inventories of controlled substances shall be available for immediate inspection and copying on the premises by the Board or its designee at all times during business hours and shall be retained for the entire term of probation.

10. Clinical Training Program

Within 60 calendar days of the effective date of this Decision, petitioner shall enroll in a clinical training or educational program equivalent to the Physician Assessment and Clinical Education Program (PACE) offered at the University of California - San Diego School of Medicine ("Program"). Petitioner shall successfully complete the Program not later than six months after petitioner's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The Program shall consist of a Comprehensive Assessment program comprised of a two-day assessment of petitioner's physical and mental health; basic clinical and communication skills common to all clinicians; and medical knowledge, skill and judgment pertaining to petitioner's area of practice, and at minimum, a 40-hour program of clinical education in petitioner's area of expertise and which takes into account data obtained from the assessment, Decision, Petition for Reinstatement, and any other information that the Board or its designee deems relevant. Petitioner shall pay all expenses associated with the clinical training program.

Based on petitioner's performance and test results in the assessment and clinical education, the Program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, treatment for any medical condition, treatment for any psychological condition, or anything else affecting petitioner's practice of medicine. Petitioner shall comply with Program recommendations.

At the completion of any additional educational or clinical training, petitioner shall submit to and pass an examination. Determination as to whether petitioner successfully completed the examination or successfully completed the program is solely within the program's jurisdiction.

Petitioner shall not practice medicine until petitioner has successfully completed the Program and has been so notified by the Board or its designee in writing, except that petitioner may practice in a clinical training program approved by the Board or its designee. Petitioner's practice of medicine shall be restricted only to that which is required by the approved training program.

11. Violation of Probation Condition for Substance-Abusing Licensees

Failure to fully comply with any term or condition of probation is a violation of probation.

A. If petitioner commits a major violation of probation as defined by section 1361.52, subdivision (a), of title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

- (1) Issue an immediate cease-practice order and order Petitioner to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of title 16 of the California Code of Regulations, at petitioner's expense. The cease-practice order issued by the Board or its designee shall state that petitioner must test negative for at least a month of continuous biological fluid testing before being allowed to resume practice. For purposes of determining the length of time a petitioner must test negative while undergoing continuous biological fluid testing following issuance of a cease-practice order, a month is defined as 30 calendar days. Petitioner may not resume the practice of medicine until notified in writing by the Board or its designee that he may do so.
- (2) Increase the frequency of biological fluid testing.
- (3) Refer petitioner for further disciplinary action, such as suspension, revocation, or other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (b).)

B. If petitioner commits a minor violation of probation as defined by section 1361.52, subdivision (c), of title 16 of the California Code of Regulations, the Board shall take one or more of the following actions:

- (1) Issue a cease-practice order;
- (2) Order practice limitations;
- (3) Order or increase supervision of petitioner;
- (4) Order increased documentation;

- (5) Issue a citation and fine, or a warning letter;
- (6) Order petitioner to undergo a clinical diagnostic evaluation to be conducted in accordance with section 1361.5, subdivision (c)(1), of title 16 of the California Code of Regulations, at petitioner's expense;
- (7) Take any other action as determined by the Board or its designee. (Cal. Code Regs., tit. 16, § 1361.52, subd. (d).)

C. Nothing in this Decision shall be considered a limitation on the Board's authority to revoke petitioner's probation if he has violated any term or condition of probation. (See Cal. Code Regs., tit. 16, § 1361.52, subd. (e).) If petitioner violates probation in any respect, the Board, after giving petitioner notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against petitioner during probation, the Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

12. Supervision of Physician Assistants

During probation, petitioner is prohibited from supervising physician assistants.

13. Obey All Laws

Petitioner shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

14. Quarterly Declarations

Petitioner shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Petitioner shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

15. Compliance with Probation Unit

Petitioner shall comply with the Board's probation unit and all terms and conditions of this Decision.

16. Address Changes

Petitioner shall, at all times, keep the Board informed of petitioner's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021, subdivision (b).

17. Place of Practice

Petitioner shall not engage in the practice of medicine in petitioner's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

18. License Renewal

Petitioner shall maintain a current and renewed California Physician's and Surgeon's Certificate.

19. Travel or Residence Outside California

Petitioner shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than 30 calendar days.

In the event petitioner should leave the State of California to reside or to practice petitioner shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return.

20. Interview with the Board or its Designee

Petitioner shall be available in person upon request for interviews either at petitioner's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

21. Non-practice While on Probation

Petitioner shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of petitioner's return to practice. Non-practice is defined as any period of time petitioner is not practicing medicine in California as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. All time spent

in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event petitioner's period of non-practice while on probation exceeds 18 calendar months, petitioner shall successfully complete a clinical training program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Petitioner's period of non-practice while on probation shall not exceed two years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice will relieve petitioner of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws and General Probation Requirements.

22. License Surrender

Following the effective date of this Decision, if petitioner ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, petitioner may request to surrender his license. The Board reserves the right to evaluate petitioner's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, petitioner shall within 15 calendar days deliver petitioner's wallet and wall certificate to the Board or its designee and petitioner shall no longer practice medicine. Petitioner will no longer be subject to the terms and conditions of probation. If petitioner re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

23. Probation Monitoring Costs

Petitioner shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on

an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

24. Completion of Probation

Petitioner shall comply with all financial obligations (e.g., probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, petitioner's certificate shall be fully restored.

DATED: June 29, 2016

DocuSigned by:
Diane Schneider
B77FF670BA7A431...

DIANE SCHNEIDER
Administrative Law Judge
Office of Administrative Hearings